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estate, if the building be erected within the authority conveyed by the lease, is sufficient title of ownership to authorize a mechanic's lien under the statute. *Crutcher et ux. v. Block* (1907), — Okla. —, 91 Pac. Rep. 895.

This case passes for the first time in Oklahoma upon the session in question of the Mechanic's Lien Law of 1903. The construction of the term "owner," as used in the statute, so as to include the holder of a leasehold estate in lands, is undoubtedly correct, and supported by the weight of authority. In those states in which the statute specifically uses the word "owner" a similar interpretation is adopted. *Hathaway v. Davis*, 32 Kans. 693, 5 Pac. 29; *Morgan v. Bloecker*, 6 Pa. Dist. R. 659; *Alley v. Lamer*, 41 Tenn. 540; *Leismann v. Lovely*, 45 Wis. 420. It is a well settled rule that a mechanic's lien may attach to and be enforced against a leasehold estate, even though the tenancy be only from month to month. 20 AM. & ENG. ENC. OF LAW, 303-4; *McCarty v. Burnet*, 84 Ind. 23; *Hathaway v. Davis*, 32 Kans. 693; *Forbes v. Mosquito Fleet Yacht Club*, 175 Mass. 432; *Peninsular General Electric Co. v. Norris*, 100 Mich. 496; *Daniel v. Weaver*, 73 Tenn. (5 Lea) 392. Some cases have gone so far as to hold that any interest which the owner of a building or improvement may have in the lot or land on which it is situated will support a mechanic's lien, if such interest be one that can be assigned or transferred or sold under execution. *Walker v. Daimwood*, 80 Ala. 245; *Jarvis v. State Bank*, 22 Colo. 309; *Garland v. Bear Lake, etc., Water Works, etc., Co.*, 9 Utah 350; *McGreary v. Osborne*, 9 Cal. 119; *Benjamin v. Wilson*, 34 Minn. 517.

PLEADING—ELECTION BETWEEN COUNTS.—In an action for drilling a well, plaintiff in one count sought a recovery on the ground of his performance of a written contract which he alleged was substantially modified by parol, and, in another count, a recovery on a quantum meruit. *Held*, the court erred in requiring him to elect on which count he would proceed. *Norbeck & Nicholson Co. v. Pease* (1907), — S. D. —, 112 N. W. Rep. 1136.

This is a case of first impression in South Dakota. HANEY, J. dissenting, maintains that as there was but a single cause of action stated, the lower court did not err in compelling the plaintiff to elect on which count he would proceed. The majority recognize the general principle that, under the Code, a single cause of action should be stated in a single count, but hold that, where the plaintiff is uncertain as to what the legal liability is, he may state the cause of action in different counts. In support of the majority opinion, see *Wilson v. Smith*, 61 Cal. 209; *Willard et al. v. Carrigan*, 8 Ariz. 70, 68 Pac. 538; *Oberndorfer v. Moyer*, 30 Utah, 325; *Leonard et al. v. Roberts*, 20 Colo. 88; *Rinard v. Omaha, Kansas City and Eastern R. R. Co.*, 164 Mo. 270, 64 S. W. 124; *Cawker City Bank v. Jennings*, 89 Ia. 230, 56 N. W. 494; *Armstrong v. Penn, Adm'r.*, 105 Ga. 229. But a tendency towards an opposite ruling is found in some states. A cause of action on contract cannot be joined with one setting up the same facts on quantum meruit. *Muzzy v. Ledlie*, 23 Wis 445. See also *Ferguson v. Gilbert*, 16 Ohio St. 88; *Wehmhoff v. Rutherford*, 98 Ky. 91; *Reed et al. v. Poin Dexter*, 16 Mont. 294; *Bassett v. Shares*, 63 Conn. 39, 27 Atl. 421; *Fox v. Graves*, 46 Neb. 812.